State and Federal efforts to collect delinquent child support. As I stated before, we need to avail ourselves of all options available to ensure child support payment is enforced. When I reintroduced my child support enforcement legislation, my new bill will provide all welfare program recipients cooperate in child support enforcement efforts, as a condition of their receipt of assistance.

I want to reemphasize how much each of us can learn from the practical knowledge these frontline eligibility workers have about how the welfare system works, where the problems are, and what the possible solutions are to address them. They are not defenders of the welfare system status quo. They see both the positive and the negatives of the current welfare system, and they are just as frustrated with the welfare system as are the public and Members of Congress.

The welfare system must be substantially changed, and on that we can all agree. We can all agree too that there will always be people who will need the safety net welfare assistance provides at some time in their lives, and we must ensure the net is there for them.

But as the Senate begins its deliberations on welfare reform, we need to heed the lessons learned by these eligibility workers. As we make the necessary changes, let us always remember to work to ensure the current policy conflicts are not carried forward. Let us not create more unintended consequences when we change the system.

I yield the floor.

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The Senate continued with the consideration of the bill.

Mr. BROWN addressed the Chair.

The PRESIDING OFFICER (Mr. DEWINE). The Senator from Colorado.

Mr. BROWN. Parliamentary inquiry. What is the business before the Senate?

The PRESIDING OFFICER. The pending business before the Senate is amendment No. 599.

Mr. BROWN. Mr. President, I rise to advocate the adoption of the Brown amendment No. 599 that proposes to restore the sanctions against frivolous actions of the Federal Rules of Civil Procedure.

Most Americans would be shocked, I believe, to find that the Congress has acted to gut the restrictions against bringing frivolous legal action. Many will ask in this Chamber, ''How is that possible? Who in this Chamber would possibly vote or even advocate doing away with restrictions on bringing frivolous actions in Federal courts?'' And the answer is that the previous Congress did it through neglect. The last Congress took what I believe most Americans will find to be an absolutely outrageous act by neglect, by refusing to consider the proposed changes to the Federal Rules of Civil Procedure. Proposed changes in the Federal Rules of Civil Procedure become effective automatically if Congress fails to act, and that is what Congress did—fail to even consider them.

There literally was not a bill brought up in the Judiciary Committee which allowed Congress to voice its concern about the proposed changes to the Federal Rules of Civil Procedure.

To make matters worse, the changes to rule 11 eliminated the deterrence against frivolous lawsuits. Let me quote the dissent from the Supreme Court opinion with regard to this matter:

> It takes no expert to know that a measure which eliminates, rather than strengthens, a deterrent to frivolous litigation is not what the times demand.

Mr. President, that is true, and what we attempt to do with this amendment is simply restore to the Federal Rules of Civil Procedure a form of sanctions and admonitions against bringing frivolous litigation. I intend to ask for a record vote on this, and it will be an opportunity for Members of the Senate to go on record: Do they favor our Federal courts being used to bring frivolous action, groundless action, or do they oppose it? It is a very clear vote. It is a very clear amendment. It is not complicated.

I think a legitimate question at this point is how in the world could a change of this kind ever possibly have taken place without someone standing up and calling the attention of this body to it and making sure it did not happen?

Let me address that because I think it is a relevant question and one to which Members deserve an answer.

In transmitting the changes to the Federal Rules of Civil Procedure, Chief Justice Rehnquist, in his letter of April 22, 1993, said the following:

> This transmittal does not necessarily indicate that the Court itself would have proposed these amendments in the form submitted.

For those in this Chamber who think the fact this was transmitted to us by the Supreme Court means they agreed with it, they need to take a look at the very transmittal document itself. The Chief Justice makes it clear that this does not involve, or necessarily indicate, the Court favors these changes.

Mr. President, I think it is important to note that none other than Justice White issued a separate statement with regard to that, and I intend to go into his statements voicing his concern about the procedure, and the dissent was filed by Justices Scalia in which Justice Thomas joined and Justice Souter joined as well.

I might mention that dissents with regard to changes in civil procedure are very unusual, and it is an exceptional case in which anyone ever dissents because, frankly, as Justice White points out, it is their view that there is some constraint on the Court through questions of constitutionality and of what role they should play in this activity, which is basically a form of legislation.

Let me quote Justice White because I think he explains this process in a clear fashion:

> 28 U.S.C. Section 2072 empowers the Supreme Court to prescribe general rules of practice and procedure and rules of evidence for cases in the Federal courts, including proceedings before magistrates and the court of appeals. But the Court does not itself draft and initially propose these rules. Section 2073 directs the Judicial Conference to prescribe the procedures for proposing rules mentioned in section 2072. The Conference has been authorized to appoint committees to propose such rules. These rules advisory committees are to be made up of members of the professional bar and trial and appellate judges. The Conference is also to appoint a standing committee on rules of practice and evidence to review recommendations of the advisory committees and to recommend to the Conference such rules and amendments to those rules as may be necessary to maintain consistency and otherwise promote the interest of justice. Any rules approved by the Conference were transmitted to the Supreme Court which, in turn, transmits any rules prescribed pursuant to section 2072 to the Congress.

Mr. President, what he has outlined quite clearly is that these changes in the rules, while transmitted through the Supreme Court, do not necessarily represent the views of the Court—a view echoed by the Chief Justice.

Further, Justice White states:

> The Justices have hardly ever refused to transmit the rules submitted by the Judicial Conference. And the fact that aside from Justices Black and Douglas it has been quite rare for any Justice to dissent from transmitting such rules suggests that a sizable majority of the 21 justices who sat during this period concluded that Congress intended them to have a rather limited role in the rulemaking process. The vast majority, including myself, obviously have not explicitly subscribed to the Black-Douglas view that many of the rules proposed dealt with substantive matters the Constitution reserved to Congress, and that in any event were prohibited by 2072 in injunctions against abridging, enlarging, or modifying substantive rights.

Mr. President, I mention this because I think it is critical as Members consider this subject to ask themselves whether or not the changes that went into effect automatically carried with them an aura that we should respect and honor and not question or even review. Justice White concludes in his opinion that was transmitted stating this:

> In conclusion, I suggest it would be a mistake for the bench, the bar, or the Congress, to assume that we are duplicating the functions performed by the standing committee of the Judicial Conference with respect to changes in the various rules which come to us for transmittal.

Mr. President, I believe the record is quite clear. It is a mistake for anyone to come before this body and to suggest that the fact that the Supreme Court transmitted these proposed rules changes means that they think they are good rules changes. I think the statement of Justice White, and particularly the dissent of the three Justices, which is almost unprecedented,

indicates very clearly that the Court itself has serious concerns.

Mr. President, the reality is this: Congress has the power in the Constitution to enact statutes. Congress did not perform its function because no vehicle was allowed to be considered. That is why I think it is important that we provide for the consideration of these changes right now. Let me state quite clearly, I would like to go back to the old rules. I think the old rules were not only far superior to the changes that happened by default, but I think they were much stronger. But the amendment before you is a version that is somewhere between the old rules and the new rules. The amendment adopts or accepts many of the changes that seemed to have articulable support behind them or for which the Trial Lawyers Association could come forward with reasonable arguments. So this amendment does not go as far as I would like it to. It does not restore the old rules. But it does restore a portion of the old rules in areas where I felt there was literally no reasonable justification for accepting the gutting changes proposed by the Judicial Conference.

Mr. President, rule 11 is one of the most important tools courts have to fight frivolous, baseless, and harassing suits. This amendment gives Members a chance to go on record on that question. Do you want frivolous actions brought? Do you want baseless and harassing suits cluttering up our courts or not? That is what this amendment is all about.

Swift action against frivolous lawsuits and claims save time and money and taxpayers' dollars and promotes public respect for the integrity of the Federal court. I think that may be the most single important question raised by this amendment and those rule changes. Shouldn't our Federal courts require integrity in their process and substance in the allegations? Those who want to gut rule 11 will say, no, we should not have any restrictions in this area. But I believe maintaining the integrity of the Federal court system is important, and that is why this amendment is brought before the Senate.

The new version of rule 11, which was changed upon the recommendation of the Judicial Conference, eviscerates the deterrent value of rule 11. That is not just my opinion. It is the opinion of attorneys and judges who have reviewed the action and who share my concern about our turning our backs on ensuring the integrity of the Court.

The December 1, 1993, version of rule 11 allows frivolous lawsuits to go forward. It allows baseless lawsuits. It actually allows attorneys to file allegations without knowing them to be true. Let me repeat that because I think it is the core of what we are talking about. It allows attorneys to go into court and to file allegations without knowing them to be true.

How can anyone come before this body and say that makes sense? How can anyone come before the American people and say we are going to set up a court system in which you are going to have filings in which even the paid advocate of the cause does not know to be true? Mr. President, the rules allow attorneys to make assertions without any factual basis and before they have done their research. Let me repeat that. It allows attorneys to literally make assertions without having any factual basis for those assertions. It is scandalous to suggest that our courts are going to be used for hearings on allegations that have no factual basis and before any research is done. That is ludicrous, it is shameful, and it is why it is so important for us to move ahead and to correct what is clearly an abuse by and neglect of previous Congresses.

In short, the December 1, 1993, version encourages the kind of baseless suits and claims which rule 11 was literally enacted to prevent. The new rule 11 says, ''Sue first and ask questions later.''

Mr. President, that is not an exaggeration. That is literally what rule 11 allows in its current form. Sue first and do research later.

What this amendment does is put teeth back into rule 11. It does so by making sanctions for frivolous suits mandatory, as they once were.

Mr. President, I want to take a few minutes and go through specifically what this amendment does, how it compares with the old rule, and how it compares with the new rule.

I think it is important for Members to know and understand that what is before them is a very moderate version. The amendment adopts many of the changes the Judicial Conference wanted. But it does not adopt the concept that we will gut rule 11 and threaten the integrity of the court system.

How can anyone looking at our Federal court system want to allow courts to be cluttered up with frivolous actions? The facts are these: In 1990, over 10 percent of the Federal district court cases were over 3 years old. Mr. President, we have such a huge backlog that we literally have more than 10 percent of the cases who, after 3 years, have not been resolved.

The current trend of more and more cases filed in Federal court continues. In 1992, over 226,000 cases were filed, and literally, under the current trends, the number of cases will double every 14 years. In the face of eviscerating rule 11, Congress did not act to save the one effective tool that deters frivolous litigation. Congress allowed a new rule to be adopted that weakens the process despite evidence and opinions of judges and lawyers.

Mr. President, I want to go into those opinions because the judges and lawyers that work with this are alarmed at the changes in rule 11. Someone will say, well, now, wait a minute, at least there was a committee, there are some people who admit they like these changes, and that is the Judicial Conference Committee that dealt with this. Take a look at the attitudes of the bar in general, because one should not assume that the fact that the Judicial Conference or, more specifically, a committee of that conference, made the recommendations, that they speak for attorneys and judges across this country.

Here are the facts: In a recent study by the Federal Judicial Center, they found that a strong majority of Federal judges support the old rule 11, not new rule 11, but the old rule 11. The study found that 95 percent of Federal judges who responded believed that rule 11 does not impede the development of law. They found that 71.9 percent believe that the benefits of rule 11 outweighed any additional requirement of judicial time. They found that 80.9 percent believe the old version of rule 11 had a positive effect on litigation in the report. Mr. President, let me repeat that: Over 80 percent of the judges felt the old version of rule 11 had a positive impact on litigation in the Federal courts. The proponents of the new form of rule 11 that come to this body and claim this somehow has the blessing of the legal community have not looked at the facts. This had the blessing of a group of insiders, of a committee, but it did not have the blessing of the bar as a whole. Over 80 percent believe the old rule 11 should be retained in its current form.

Mr. FORD. Mr. President, would the distinguished Senator from Colorado take a question?

Mr. BROWN. I would be happy to take a question at the completion of my remarks.

Mr. FORD. I wanted to insert because the Senator said ''of those judges responding,'' and I did not know whether half responded, 25 percent responded—the Senator is using the 80 percent—or whether 100 percent responded and the Senator is using 80 percent. ''Of those who responded,'' I wonder if it was a large number or a small number.

Mr. BROWN. I appreciate the question of the distinguished Senator. I think he may not have heard in my remarks I quoted the 1990 study of the Federal Judiciary Center, and I will be happy to supply the Senator with the study.

It might also be noted that rule 11 issues were raised in only 2 to 3 percent of all cases; that they concluded that rule 11 imposes only modest burdens on Federal judges and that rule 11 sanctions have typically been taken in the form of monetary charges payable to the injured party.

Mr. President, I want to turn now to the rules changes themselves. I will, of necessity, deal and focus particularly on three of them. There are additional nuances, but I think these three are the most important and at the heart of the amendment that is before this body.

Mr. President, the first one that we want to look at is the old rule, which required that the attorney or the party

must sign the pleading of the motion and indicate that the facts designated therein represent the best of the signer's knowledge and that they are based on information and belief formed after a reasonable inquiry that is well grounded in fact and that is not interposed for improper purposes such as to harass or cause unnecessary delay or needlessly increase the cost.

Mr. President, the new rule guts those provisions that are meant to ensure integrity in the process. Here is how it reads:

By presenting to court, an attorney is certifying the allegations and other factual contentions have evidentiary support, or if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

The option which then controls is ''or likely to have support, if investigated.'' In other words, they do not have to certify any longer that they are true or that they have investigated them. They are literally saying we can bring filings in the court that have not been investigated and which a person does not know are true.

Here is what we do with the version that is presented in this bill. We say, ''by presenting to court, an attorney is certifying the allegations and other factual contentions have evidentiary support or are grounded in fact.'' It is less severe than the old rule. I would like to go back to the old rule. But at least this amendment requires that the allegations are grounded in fact or have evidentiary support.

Now, that is a clear question. Should filings in Federal court be grounded in fact? Should they have evidentiary support? Or should a person be allowed to find anything they want without a requirement of knowing that it is true? Or even having been required to investigate it before it is filed? It is a very clear question. It is one I think Members will be anxious to cast their vote on and let citizens know how they feel.

The second change deals with an additional question. Let me read the old rule:

If a pleading, motion or other paper is signed in violation of this court rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party or both, an appropriate sanction.

In other words, if a person is guilty of violating the rules, that person will get sanctioned. That must not sound very unusual for observers. Why would we want to change that?

The new rule does a couple of things. What it says is that if a person is guilty, if they violate the rules, a person does not have to be sanctioned. In other words, an opposing counsel can point out that this was done without any background, and when the attorney—who has made an inaccurate filing, when an attorney who has violated the rules—is caught, the new rules say that even though you are guilty, even though you have been caught, even though you have caused the other party harm, you can get off scot-free. That is not my idea of justice and I do not think it is the American people's idea of justice.

Here is what we do. We restore that portion of the old rules that says if you are guilty you are going to get sanctioned. It leaves it up to the court to decide what the appropriate sanction is, but at least we say if you are guilty of violating the rules and it is shown to the court, you will be sanctioned. Those who want violators to get away without being sanctioned will want to vote against this amendment. But those who think if you are guilty you ought to be sanctioned will want to vote for it.

The third one I want to summarize is one that I think Members will find hard to imagine that the committee recommended. The new rule says that if you are guilty of violating the rules, and even though under their changes you do not have to be sanctioned, but if you are sanctioned even though you do not have to be sanctioned, then they say the penalty for this misbehavior can be paid to the court and not to the injured party. Talk about rigging the rules. They are saying: First of all, we are going to dilute what is impermissible behavior; but if you are found guilty of impermissible behavior even under the diluted rules, you do not have to be sanctioned; and even if under the diluted rules you are found guilty and you are sanctioned, the money does not go to the injured party. In other words, they pull the rug out from under any incentive of the injured party to seek redress.

The amendment addresses the third area in a pretty basic and simple way. It restores the preference that if you are guilty and if you are sanctioned, the awards first go back to the injured party, not to the court. The amendment reads as follows:

A sanction imposed for violation of this rule may consist of reasonable attorneys' fees and other expenses incurred as a result of the violation, directives of a nonmonetary nature, or an order to pay penalty into court or to a party.

In other words, we eliminate the priority that the sanction go to the court and give the court discretion in that area. That is basically what we are talking about in this amendment. We restore to the rules some of the integrity of the process. We indicate that there will be sanctions if you are guilty, and we eliminate the favored status of having the penalty, if it is imposed, go to the court and allow it to go to the injured party if they wish.

This does not solve all the problems with frivolous litigation. I wish it did. But it does restore some of the integrity to rule 11 and some of its effectiveness.

I want to quote the dissent signed by three Justices of the Supreme Court when they forwarded these. It is very unusual for dissents to be written in these transmittals, but I think the words speak for themselves.

In my view, the sanctions in the new rule are not strong enough; thus, the new rule eliminates a significant and necessary deterrent to frivolous litigation . . . and perhaps worst of all introduce into the trial process an element that is contrary to the nature of our adversary system.

That is what this is all about. Will we eliminate a deterrent to frivolous litigation? Will we burden the district courts? That is really what this is all about. I think a reasonable question could be raised at this point and that reasonable question would be simply this: Do lawyers, do attorneys behave differently if these sanctions, monetary sanctions exist? If there are mandatory sanctions for violating the rules, does it affect the behavior of attorneys? That is the assumption this process is based on anyway, that by having a rule that prohibits frivolous litigation and provides mandatory sanctions, that counsel will behave differently; they will behave different if they have to pay a mandatory penalty than they will if they do not.

There is some evidence on that. There is some evidence because before 1983 you did not have mandatory sanctions and after 1983 and before this recent change you did have monetary sanctions. So there was a study done. It is known as the Nelken study, by Melissa L. Nelken. She did a study of rule 11 and she considered the impact on the Federal practices of both lawyers and judges in the northern district of California. It is confined to that area. It was part of the ninth circuit.

The survey questionnaire was sent to some 17 judges, 7 magistrates, and 107 attorneys. All of these individuals had been involved in rule 11 proceedings. That was done to make sure the survey was conducted among people who had some knowledge of the process and some experience with it. Mr. President, 68 attorneys, 64 percent of them, responded; 12 judges or magistrates, or 50 percent of those, responded to the survey. Here is what it showed.

The question was, ''Has amended rule 11 changed your practice, if any, in the following areas?''

The change they are talking about is the change of making sanctions mandatory in 1983. Mr. President, 46 percent of the respondents indicated that they had engaged in additional prefiling factual inquiry. What we are literally seeing is 46 percent of those attorneys, those practitioners, those on the line, had said when sanctions are mandatory they engaged in more prefiling factual inquiry than they did when they were not mandatory. I think that is a plus. I think that improves the integrity of the system.

Mr. President, 33 percent indicated additional prefiling legal inquiry; that is, when sanctions were mandatory, 33 percent indicated—admitted that they had done additional prefiling legal inquiry over and above what they did when sanctions were not mandatory.

This is only one study. It is a limited area. But I think it is real proof of

what our common sense would tell us. When sanctions are required there is more work that goes into making sure the filings are correct than when there is no sanction.

I want to take one more quote out of the opinion of the Supreme Court accompanying the recommended changes in 1993. This is at the conclusion of the dissent. It says as follows:

> It takes no expert to know that a measure which eliminates rather than strengthens a deterrent to frivolous litigation is not what the times demand.

I do not think it could be said any clearer. Should we eliminate deterrence to frivolous litigation? That is what this amendment is all about. If you favor deterring frivolous litigation, you will want to vote yes. If you do not want to deter frivolous litigation, then you will vote no.

It boils down to these substantive changes in the rules—to efforts to restore these basic rules: First, should filings be grounded in fact? I think they should.

Second, should sanctions be required if you file frivolous actions? If you are found guilty of filling frivolous actions, should sanctions be required? I think they should.

Third, should the injured party have a standing for compensation, or more particularly should the priority of the court be to have a sanction for someone who is guilty, and should the priority be for that money to go to the court, or should it be the priority or at least the option for that money to go to the injured party? I think the injured party should not be shortchanged in this process.

These are moderate changes in rule 11. Again, they do not go back to the old rule 11 which I would like to. They do adopt some of the changes proposed by the conference. But, Mr. President, this is an important matter because this is an effort to restore the integrity to the legal process. It is an effort to restore integrity to our courts and discourage frivolous actions by restoring rule 11. I think it is appropriate for this bill. I do not think the amendment could be more appropriate because at the heart of addressing the problems with the litigation system in the United States—at the heart of it—is to restore integrity to the system. That is what this amendment is intending to do.

Mr. GORTON. Mr. President, I would like to comment very briefly on the eloquent remarks of my friend from Colorado. His remarks are equally and highly thoughtful and persuasive. There is no question but that this Senator strongly supports his judgments with respect to rule 11 and the desirability of a return to a much more fair and balanced such rule.

At the same time, Mr. President, I must say that rule 11 has little if anything to do with the subject before the Senate, the product liability bill, which almost universally will apply to litigation brought in State courts and, therefore, whether or not it is appropriate to be included with this bill is a question which I think relates primarily to the attitude of Members of the body itself.

This is an extremely controversial bill. Should this strengthen its chances for passage, it would be welcome. If it weakens the chance for passage of something as important as product liability, I hope at some point or another the bill would be withdrawn and dealt with at a more appropriate time.

Mr. ABRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. ABRAHAM. Mr. President, I rise today in support of the Product Liability Fairness Act which I consider to be a very important piece of legislation. I believe it is the principal first step in reforming our increasingly irrational, often unfair and very costly civil justice system. This system is burdening our economy, it is burdening America's consumers and its middle class; ultimately it is weighing down the community institutions and organizations that help us live together as friends and neighbors. By enacting product liability reform, we can begin reinvigorating our economy, giving consumers a choice of products and decreasing the expense and unpredictability of our tort system.

This bill makes a number of much-needed reforms. First, it caps punitive damages in product liability suits. This reform does not limit anybody's right to recover in full for any damages suffered. That right remains intact even if the recovery runs into the millions. Rather, it merely limits the punitive damages that can be awarded over and above what is needed to compensate those injured by defective products.

These punitive damages are supposed to function as a punishment for the defendant. But because they are awarded to claimants, their potential availability attracts lawsuits whenever somebody thinks he or she might get lucky and hit the jackpot.

Capping these damages will place a real limit on windfall profits in product liability lawsuits and thus lead to fewer frivolous claims being filed and less unnecessary extension of lawsuits which could be settled.

In addition, the bill would eliminate joint liability for noneconomic damages in product cases, and replace it with proportionate liability. It thus would end the costly and unjust practice of making a company pay for all damages when it is only responsible for, say, 20 percent, just because the other defendants already have gone bankrupt. Instead each defendant would have to pay only for the noneconomic damage he or she actually caused.

The bill also establishes important limits to the liability of product sellers, as well as suppliers of raw materials critical to the production of life-saving medical devices. Generally speaking, the bill makes clear that these sellers and suppliers can be held liable only for their own misconduct in connection with the product. If, for example, the purchaser misuses the product, then that purchaser is responsible to the extent he or she is injured on account of his or her own misuse.

These provisions go a good way toward restoring individual responsibility as the cornerstone of tort law. They also recognize an important problem with our legal system: Ultimately, in its current form the system is profoundly anticonsumer.

The tort tax imposed by our legal system raises prices on many important goods, rendering them unavailable to poor people. And in extreme cases, our legal system can literally bring death or misery; it does so by driving off the market drugs that can cure terrible but rare diseases, or medical devices for which raw materials are unavailable on account of liability risks.

Mr. President, this is not mere hyperbole. There are some 5,000 diseases that affect small numbers of Americans. Many of these diseases, such as cystinosis, a fatal kidney disease, and leprosy, are extremely serious. But a number of them go untreated. Pharmaceutical companies cannot afford to market drugs to treat these diseases because the cost of liability insurance is prohibitive.

To give just one example: A West German chemical company at one time supplied Americans with botchyoulinum. If properly used this drug, otherwise a paralytic poison, can control a rare but incapacitating disease, characterized by uncontrollable twitching of the eye muscles. Unfortunately the company cut off American supplies to avoid the risk of being held liable should people misuse its product.

And this is no isolated instance. A recent Gallup survey found that one out of every five small businesses decides not to introduce a new product, or not to improve an existing one, out of fear of lawsuits. And, according to a Conference Board survey, 47 percent of firms withdraw products from the market, 25 percent discontinue some form of research, and 8 percent lay off employees, all out of fear of lawsuits.

Mr. President, this bill takes important steps to address these problems. The reforms I have specifically noted, as well as others in the bill, will help consumers. They will help our economy. And they will help our legal system. I pledge my full support for this well-considered legislation.

However, I would also like to take this opportunity to urge my colleagues to go further. And I mean go further in two respects. First, the reforms under consideration apply only to product liability. That is, they affect only suits involving manufacturers' and sellers' liability for defects in manufacturing and handling products. And second, the reforms do not address certain key flaws in our civil justice system.

The problems with our current system are deep and pervasive. They are

not limited to product liability. They affect homeowners, accountants, farmers, volunteer groups, charitable organizations, small businesses, State and local governments, architects, engineers, doctors and patients, employers and employees. In short, they affect all of us.

We need to repair our system for all Americans. And doing that will require reforms that go beyond the field of products liability. We must replace our litigation lottery with a civil justice system that is less costly, more predictable, and ultimately more fair to everybody. And we must replace the current incentives to sue with incentives to settle disputes before they get into court.

This is why in the course of the next few days I intend, along with others, to offer and support amendments that would broaden the legislation currently under consideration.

These amendments fall in two classes. The first class takes valuable reforms currently in the current product liability reform bill and applies them to other kinds of cases. Thus I will be leading an effort to broaden application of this bill's joint and several liability reform and supporting an effort to broaden application of this bill's punitive damages reform.

The other category of amendment I am supporting would reorient our current system's distorted incentives. Today, Mr. President, our tort system encourages people to spend money on lawyers and litigation rather than on resolving disputes quickly and compensating deserving claimants.

The right to know and rapid recovery amendments I have introduced with my colleague from Kentucky will promote speedy compensation for claimants, save attorney's fees, greatly reduce the cost of liability insurance and change our culture of litigation, which brings me to my last point, Mr. President. A broad approach to legal reform will help our communities. Our current system discourages the voluntarism and civic participation that hold our towns and neighborhoods together. A Gallup survey found that 8 percent of nonprofit organizations had volunteers resign over liability concerns; 16 percent reported volunteers withholding their services due to fear of liability, and 49 percent reported seeing fewer volunteers willing to serve in leadership positions.

This is disastrous, Mr. President. When almost half our nonprofit organizations are finding it more difficult to get people to serve in leadership positions, we are in trouble. When our citizens are afraid to serve their neighbors out of fear of being sued, we are in danger of losing that sense of common cause and mutual reliance that is at the heart of any community.

We have been hearing a good deal lately about the breakdown of our communities. And it is a real problem. This problem arises in part from peoples' understandable fear of local bullies and strangers who prey on them in their streets and homes.

But today our law-abiding citizens suffer from another even more debilitating fear: a fear of each other.

Too many Americans are afraid to get involved with their local little league or Girl Scouts or volunteer fire department because they seriously believe that if they make an honest mistake they will be sued and lose everything they have merely for trying to help.

So long as Americans see one another as potential plaintiffs, they cannot see one another as neighbors. So long as we encourage lawsuits rather than personal responsibility and early dispute resolution our citizens will fear even those they know well—and come to see them as strangers whom they themselves will sue at the slightest provocation.

Neighbors no longer trust one another enough to look out for each other, and each others' children. The result is a breakdown of mutual support and pride in the community, leaving it easy prey for other social ills like crime and delinquency.

We must break this destructive cycle, Mr. President, for the sake of our families and our children. We must begin to rebuild our communities by restoring the sense that we can count on one another's good will and forgiveness for innocent mistakes. We must restore trust among our citizens, and health and vigor to our economy, by remaking our civil justice system to reward neighborliness rather than stubborn greed.

Mr. President, we must reform our tort system so that we encourage people to come together on their own to settle disputes before they end up in court, costing time, money, and bad feelings.

The result will be a reinvigorated economy, more jobs and necessary products for us all, and a revival of that civility and common feeling some of us remember with regret from an era not too long ago; an era in which Americans thought of one another not as potential plaintiffs and defendants but as neighbors trying to help each other in making their community a better place.

Mr. President, I yield the floor.

Mr. BURNS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. I thank the Chair.

I am starting my seventh year in the Senate, and every year it seems as if we always come up with a product liability bill. I have served on the Commerce Committee under the leadership of Senator HOLLINGS and under the leadership also of Senator Danforth, who was a great champion of product liability reform.

I want to thank Senator GORTON, who has picked up the traces, so to speak, and especially to Senator ROCKEFELLER who through all of the years I have been here, starting the seventh year, has also played a very strong part in leadership on this issue, diligently trying to seek reform.

I have supported product liability reform primarily because I believe it is time now for Congress to act on what some would term barriers to economic growth in this country. And the need to reform our product liability system is no less urgent now while the economy is seemingly healthy than if we would experience economic downturn.

The current system drives up costs in nearly every sector of the economy and does very little to improve our quality of life and does very little to increase safety at the workplace. In the last 30 years, the number of cases filed in Federal courts has more than tripled, to over 250,000 a year.

Now, this issue, yes, is a jobs issue; it is a competitiveness issue, and some would term it even a moral issue. Currently, the typical American manufacturer faces product liability costs that are 20 to 50 times higher than that of his or her foreign competitor. This additional cost makes American companies less competitive; they lose market share to foreign competition.

So what do they do? They raise prices and they lay off workers. The costs of runaway litigation are felt by American companies, workers and, yes, consumers alike. It is not just a big business issue either. It affects small businesses as much if not more than our large businesses.

The 1,100-percent rise in the number of Federal product liability cases in the 1970's and 1980's has driven up the cost of liability insurance to astronomical amounts. The burden of this increased cost is proportionately much greater for small business and in some cases it is the element that is a ''make or break'' issue for them.

This issue is most often presented as a consumer issue, Mr. President. I disagree with those who say that if you are for product liability reform, you are against the consumer. I reject that argument. Consumers do not benefit when the business community has to protect itself from runaway lawsuits. They pay for it. As we have often been told, it just goes into the operating costs; that companies and corporations do not pay taxes either. People pay taxes. And the threat of lawsuits keeps the vital consumer products from the market and discourages safety and other improvements that would make it a better product. Moreover, liability stifles research and development for new consumer and medical products.

This bill seeks to bring fairness to a system without taking away an injured person's right to a fair and speedy trial and, yes, just settlement. Right now the system fails to compensate those injured in proportion to their losses and it takes them far too long to receive the compensation.

The people who benefit the most in the current system, let us face it, are the principals involved, the lawyers. Studies say that 50 to 70 cents of every

dollar a jury awards to an injured person goes to the attorney. This hardly seems like a system that benefits the consumer.

There is a tremendous amount of support for this liability lawsuit reform in my home State of Montana. In a recent poll, 89 percent of Montanans indicated that the current system has problems and it should be fixed. There is a growing awareness that the only winners in the lawsuit lottery game are the attorneys and the professional plaintiffs.

S. 565 will reform the current system to make it more effective. We must protect people from careless manufacturers and defective products. This bill does not compromise that objective. It just ensures that we do so in a fashion that still allows American businesses to compete and grow in a global economy.

Congress has the opportunity to reform our product liability system, and I hope that we do not miss this window of opportunity and that we take advantage of it. This bill must become law. I ask my colleagues to support it.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BURNS). Without objection, it is so ordered.

Mr. DOLE. Mr. President, I want to signal my strong support for S. 565, the Product Liability Fairness Act. My distinguished colleagues, Senators GORTON, ROCKEFELLER, and PRESSLER, are to be commended for their leadership on this particular legislation.

This legislation is needed for several reasons. Our present system of liability has been estimated to cost the American economy an astounding $117 billion. In addition to this tort tax, our system of liability stifles innovation and prevents better—often safer—products from reaching the marketplace. The present system of liability also undermines American competitiveness, both here and abroad.

There has been a concerted effort to spread misinformation about these reforms—scare tactics—in order to hide the real issues. So let me be clear: The reforms contained in this bill, despite efforts to portray them otherwise, do not prevent persons who are harmed from recovering full compensation for their injuries. In fact, this legislation addresses abuses that undermine such compensation. Nor does this legislation alter civil rights and environmental laws in any way. In fact, the legislation explicitly excludes such Federal laws.

What this legislation is about is fairness. Our legal system is one of the bedrocks of our free society. But over the last 25 years, it has succumbed to efforts to turn it away from American principles, individual responsibilities and justice. In many cases, our system of liability resembles a lottery, where damage awards become windfalls and often deserving plaintiffs do without.

Thus, I strongly support the provisions of this bill that seek to rein in abusive punitive damages. Punitive damages are not intended to compensate victims, as the name suggests, they are intended to punish wrongdoing. But punitive damages have been widely abused in recent years, and the problem now affects every American.

Mr. President, I plan to offer an amendment later today. As I understand, after a couple of votes and after disposition of the Brown amendment, I will be recognized to offer an amendment. That may be later tonight, 7 or 8 o'clock or it may be sometime tomorrow morning. In any event, I will offer the amendment later and expand on these protections at that time and what I believe the amendment does and does not do.

But I am talking about protection for Little League players, the Girl Scouts, and small business. Groups like that are at risk from abusive lawsuits and overwhelming punitive damages. I hope to give you some examples of how this affects the Girl Scouts, Little League, and others—how many boxes of cookies they have to sell to protect themselves from frivolous lawsuits, in some cases.

We cannot allow the threat of liability to keep hard-working Americans from volunteering their time to help. We must not allow the threat of liability to sink small businesses who often can barely keep their doors open.

Although I support the Rockefeller-Gorton bill, I believe we cannot simply stop with reforms that help big business alone. We have to take a look at small business and some of the charitable groups and other groups that most American families have contact with. It is as much our responsibility to help the little guy, and that is what my amendment will achieve.

This amendment leaves the underlying provisions on the measure of punitive damages intact. Thus, punitive damages would be limited to three times economic damages, or $250,000, whichever is greater.

What my amendment would do is to take the same provision in the underlying bill and extend these protections to Americans who are often least able to cope with outrageous punitive damages.

Thus, instead of limiting these protections to product liability actions, my amendment would extend them to ''any civil action affecting interstate commerce.''

I emphasize again that this amendment in no way undermines full compensation to victims, nor does it alter Federal laws.

Most of the issues raised by the Rockefeller-Gorton bill are well known. The Commerce Committee has considered similar legislation in the 97th, 99th, 100th, 101st, and 102d Congresses, and a similar bill was considered on the floor in the 102d and 103d Congresses. We will have a reasonable time to debate these issues, but it is my hope we will not engage in dilatory tactics to distract the Senate from moving forward on this important legislation.

Having said that, I hope we will complete action on this legislation sometime midweek next week. I know that on Friday of this week the Democrats have a conference outside the city and Republicans have a conference inside the city. But we will be in session late tonight and late, late tomorrow night and, hopefully, we can at that point see the end when we might complete action on the legislation.

It would be my intention to file a cloture motion if it appears we cannot complete action in a timely fashion. I will say, as I have said before, the Senate has a lot of work to do to catch up with many things that have been sent to us from the House. My view is we will get it done. It will mean we will have fewer recesses in the Senate. It means we will be here many more days probably than the House will be in the next 100 days. It will mean long evenings. But I hope my colleagues on both sides of the aisle understand that we have a responsibility, that we all made statements to get here to the voters of the United States, and we intend to keep our word to the American voters, win, lose, or draw.

So it is my hope we will have a very productive several weeks before the brief Memorial Day recess and that will be about the last recess, maybe with the exception of a couple of days July 4 and 5 before we decide what to do with the August recess. It is not a statutory recess. It can be changed by resolution and it may be if we cannot complete our work in time we might have to abbreviate the August recess. I hope that is not the case, because many of my colleagues have made plans to be with their families and made other plans. So we will do the best we can to accommodate people on both sides of the aisle.

I do believe that we have a responsibility. We know it takes longer in the Senate. We know the Founding Fathers planned it that way. This was to be the deliberative body and we are deliberate, believe me. Sometimes it is almost too deliberate. Today is an exceptional day because many of our colleagues are attending services for former Senator John Stennis. I think 25 of our colleagues are in Mississippi today. So that necessarily means we may not accomplish much until they return about 5 o'clock.

RECESS UNTIL 2:30 P.M.

Mr. DOLE. Mr. President, I am advised by staff and the manager of the bill on this side, Senator GORTON, that it will be about an hour before there will be speakers available. They are